

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2911 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DESAI KALIDASBHAI RAMANBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR JM PANCHAL for Petitioner

MR DN PATEL, LD. APP for Respondent No. 1

MR SANJAY M. DOSHI, L.A. for respondent no.2.

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 18/07/96

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. D.N. Patel, LD. APP for the respondent no.1 - State and Mr. Sanjay Doshi, Learned advocate for respondent no.2, who is also present in person.

The petitioner and respondent no.2 seek leave of this Court to place on record compromise purshis arrived

at between the parties, namely, petitioner and the respondent no.2. The compromise purshis is accompanied with a xerox copy of affidavit of the complainant (respondent no. 2 herein). The respondent no.2 having been asked about whether he has entered into compromise. He has admitted that he has entered into the compromise. He stated before the Court that he had an occasion to file a complaint at the instance of third party, without being any truth in the allegations made. It is under such circumstances that the petitioner has also stated that he has not incurred any damage at the instance of or on account of some act or omission on the part of the petitioners. Mr. Sanjay Doshi, Learned Advocate for respondent no.2 also admits the compromise.

In view of what is stated above and in view of the facts and circumstances of the case, there is no reason why this petition be not accepted. Reference has been made to a decision of this Court in the case of Rupabhai B. Bharwad v. State reported in 1994 (1) G.L.R. 415, where this Court has an occasion to observe in paras. 6 and 7 as under :-

'Undoubtedly, it is true that Sec. 320 of the Cri. Pro. Code is silent on the point of compromise so far as the offences under so far as the Civil Rights Act and the Atrocities Act are concerned, as there is no subsequent amendment made to that effect. It is further equally true that both the Civil Rights Act and the Atrocities Act have not made any express provisions for compounding of the offences. It is under these circumstances that the question arise as to when the "Law" is silent on the point of compromise, whether the "Justice" is also required to maintain tight lips or something should be done by the Court which may ultimately bring about peace and harmony between the two classes of the Society which is fundamental prerequisite for the maintenance of the "Rule of Law", "Justice" and the overall happy and peaceful society. One can quite understand that the grave and cold blooded offences like murder, dacoity, rape, child-lifting or any such type of grave offences are not rightly made compoiundable. One can as well also understand the cases where the Court feels that composition of the offences arrived at between the parties is not genuine and voluntary but has been brought about by some threats, inducements and coercions, the Court would be justified in refusing the same. But certainly,

in cases wherein the offence takes place all-of-a sudden, in a heat of the moment and comparatively of a mild nature, and ultimately when the wisdom prevails and the passion cools down, if the aggrieved party coming to the senses, on being persuaded by some respectable persons of the area, to compound the offence which they voluntarily agree to do the same, there indeed should not be any difficulty for the Court to grant composition of the alleged offence either prior or even after the order of conviction is recorded. When the aggrieved party approaches the Court praying for compounding of the offences and the Court is satisfied that the same was honest, genuine, true and voluntary, and that the same will bring harmony and peace in the area, setting at naught the caste-hatred and conflicts arising therefrom, then there is indeed no harm in accepting such compromise purshis. Rather, not to accept the same would be indirectly perpetuating the class-hatred, the violance arising therefrom resulting into the disturbance of peace, law and order, etc. etc., and in this way, such refusals would be like adding fuel to the fire and salt to the injury. (Para.6)

Incidentally, it may be clarified that while accepting compromise, one additional factor shall have to be clearly borne-in-mind, viz. Sec. 3 of the Atrocities Act which consists of two parts- the first part pertains to the minor offences, while the second one pertains to the major offences where the sentence provided is for ten years or life. Thus, the offence falling within the ambit of the second part being quite serious so far as the life imprisonment is concerned, the Court would not be justified in granting composition of the offences. But in cases where the sentence provided is for ten years or less than that, the Court may depending upon the facts and circumstances of that particular case, grant composition of the offence. (Para.7)'

In view of the compromise and in view of the circumstances noted above, the prayer in this petition is accepted. Rule made absolute.

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